IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6304 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKORE P MOHANJI

Versus

DY COLLECTOR

Appearance:

MR PJ VYAS for Petitioners

Mr. R.V. Desai for Respondent No. 1

MR DR SHAH for Respondent No. 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/08/2000

ORAL JUDGEMENT

Learned advocate Shri P.J. Vyas is appearing for the petitioner. Learned AGP Shri R.V. Desai is appearing for the respondent No. 1 and Shri D.R.Shah for

respondent No.2 and 3.

In this petition, rule was issued by this Court on 27.8.1990 and while issuing rule, ad interim relief was also granted in terms of para 11(B) of the petition.

Brief facts of the present petition are that the petitioners are agriculturists having lands at village Bhembordi, Taluka Deodar. The father of the respondents nos. 2 and 3 Karamsi Lila was owning and possessing the land survey N o. 129 which later on came to be constituted as block no. 131 under the provisions of the Bombay Prevention of Fragmentation and Consolation of Holdings Act ("the Act" for short). The mutation entry no. 282 was made in the village form no. 6 on 25.6.1973 and the said entry was certified on 14.8.1973. As the father of the respondents nos. 2 and 3 was not able to cultivate the said lands, said lands came to be entered in the name of the respondents, in the name of respondent no.2, A. 14.10 G. and in the name of respondent No. 3 A.14.9 G. were entered in the revenue record by entry no. 255 on 1.1.1970 and the said entry was certified by the authority. On partition of the lands between the two brothers the lands as stated herein was mutated vide entry no. 346 in village form no. 6 on 25.7.1981. The respondents no. 2 and 3 sold the said lands to the petitioner by registered sale deed dated 28.6.1978. The entry No. 347 is made in village form no. 6 on 25.7.1981. Thereafter, respondent no.1 issued notice dated 24.11.1982 to the petitioners as well as respondents nos. 2 and 3 for inquiry as to whether the sale is in contravention of the provisions of sec.9 of the said Act and to show as to why fine upto Rs.250/should not be imposed on the transferer. Puersuant to the said notice, hearing was fixed on 6.12.1982 at Radhanpur which was then adjourned to 17.1.1983. On that day, statement of petitioner no.1 was recorded in which the petitioner has submitted that both the petitioners together have purchased the land A.14.10 G. which had fallen to the share of respondent No.2. Remaining land ad measuring A.14.9 G. had fallen to the share of respondent No. 3 on partition between the said respondents, and entry no. 346 is made on the record of the case. The petitioner no.1 submits that he had no knowledge about the scheme being implemented in the said village and also produced before respondent no.1 sale deed dated 28.6.1978 in original and the same is on the record of the case. Each of the petitioners purchased A.7.5 G. by two sale deeds dated 28.6.1978 and both of them are cultivating jointly and there is no sub division or partition. The Deputy COllector, under his order dated 31.1.1983 held that the sale in favour of the

petitioners by respondent No. 2 was invalid and ordered to impose fine of Rs. 50/- on the respondents and also ordered to restore the possession to the original owners. Against the said order, revision application No.1 of 1990 was preferred before the Addl. Chief Secretary to the Government, Revenue Department, Government of Gujarat under sec.35 of the said Act which came to be rejected on 24.5.1990 while ordering for summary eviction proceedings under sec.9(3) of the Act and hence this petition before this Court.

It was contended by Mr. Vyas that the provisions of sec.27(b) are not applicable and that there is no evidence on record to show that the notice under sec.15-A of the Act is served on the respondents; that there is no evidence on record to show that the scheme is implemented; that the order of the Deputy Collector is illegal and that he has failed to see that the lands which had fallen to the share of respondents no. 2 is sold to the petitioners by respondent no.2; that the petitioners are cultivating jointly and that there is no partition or sub division of the lands purchased by the petitioners; that the action of the respondent no.1 for initiating the proceedings after lapse of five years is unreasonable and exercise of power under sec.9 of the Act or any other section of the Act is futile inasmuch as the petitioners have incurred expenses for levelling the lands and for making lands fertile. He has also submitted that the revisional authority has erred in not appreciating the contentions raised by the petitioners before it in aforesaid revision application. His main submission is that the action has been taken by the Dy. Collector after unreasonable period of about five years in as much as the petitioners, after purchasing the said lands, have developed the land by incurring huge expenses and therefore, after such unreasonable delay, the respondents ought not to have taken the action having regard to the ratio laid down by this court in the case of Patel Ranchhodbhai Lallubhai versus State of Gujarat reported in 25(2) GLR page 1225. He has also submitted that both the authorities ought to have held that the action under sec. 9 was grossly belated and there was unreasonable delay in exercise of the powers under that section and, therefore, the action is unreasonable and illegal.

On the other hand, learned Asstt. GP Mr. Desai appearing for the respondent authorities has submitted that both the authorities namely Deputy Collector and the Addl. Chief Secretary have considered the matter on

merits and have rightly exercised the powers vested in them and there was no unreasonable delay on the part of the authority in initiating the proceedings and, therefore, he has submitted that there is no substance in the petition and the same is required to be rejected.

I have considered the submissions made by the learned advocates at the Bar. I have also perused the papers on record. As per my opinion, power to cancel the transaction has to be exercised within reasonable period and the same cannot be exercised after lapse of five years as per the decision of the apex court in case of State of Gujarat versus Patel Raghav Natha reported in 10 GLR 992 as well as the decision in case of Patel Ranchhodbhai Lallubhai versus State of Gujarat (supra).

Learned advocate Mr. Vyas has further submitted that both the authorities have committed error in law and facts in holding that the sale deeds executed in favour of the petitioners are against the provisions of the said Act. He has relied upon the decision of this court reported in 1986 (1) GLH (UJ) page 20 wherein it has been held that the orders under sec.9 of the Act cannot be passed after long time. He has also relied upon the decision of this court reported in 1984 GLH page 1. He has also relied upon the decision of this court in special civil application no. 1778 of 1987 in case of Ganpattram M. Sikari versus State of Gujarat delivered by Hon'ble Chief Justice Mr.D.M. Dharmadhikari on 3rd March,2000 and has submitted that the case of the petitioner herein is covered by the said decision in respect of question of unreasonable delay occurred in initiating the proceedings against the petitioner by the respondent authorities. Placing reliance upon the decision of this court in case of Ranchhodbhai Lallubhai Patel (supra), he has pointed out that the sale deed was executed on 28.6.1978 and the notice under the provisions of the Act of 1947 was issued in 24.11.1982. It is submitted that as the action under the Act was not taken within reasonable period, this court should allow the objection as after taking the possession of the land, the petitioner has spent substantial amount for its development and his eviction from the land would deprive him of the source of livelihood. Learned AGP appearing for the respondent authorities has submitted that the delay in this case is not such which can be said or described as unreasonable. This Court should, therefore, not interfere as there is clear contravention of the provisions of the Act. In case of Ranchhodbhai Lallubhai Patel (supra), the learned single Judge of this Court has placed reliance upon the decision of the apex court in

case of Manchharam versus SP Pathak and others Civil Appeal No. 1262 (N) of 1978 decided on 28th September, 1983. The said observations are as under:

> "Where the power is conferred to effectuate a purpose, it has to been exercised in a reasonable manner and the reasonable exercise of power inhers its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in State of Gujarat v. Patel Raghav Natha and others (1970) 1 SCR 335."

In the instant case, two sale deeds in question were executed on 28.6.1978 and the proceedings under the Act of 1947 were initiated on 24.11.1982. Whether the particular period of time is reasonable or not would depend upon the facts. In the instant case, it is not denied that after the purchase of the land, the petitioner remained in possession of the land and is earning his livelihood therefrom. Deprivation of the land to him after such along period of time will take away the source of his livelihood. It may also be mentioned that the petition filed in the year 1990 has unanswered so far as the averments made in the petition are concerned. The petitioner has all throughout remained in possession of the land and has cultivated the land and, therefore, in view of the decision in case of Ranchhodbhai Lalubhai Patel (supra), this Court holds that the action under the Act has been taken after undue and unreasonable delay of more than eight to ten years.

The petition therefore succeeds in the present petition considering unreasonable and undue delay by the respondent authorities for initiating the proceedings under the Act of 1947. Since the petitioners are succeeding in this petition on the ground of unreasonable and undue delay alone, other contentions raised in the present petition are not required to be separately dealt with.

Consequently, the petition succeeds and is allowed. The impugned orders dated 31.1.1983 (Annexure "A" and dated 24.5.1990 (Annexure "B") to the petition are hereby quashed and set aside. Rule is made absolute with no order as to costs.

Dt. 4.8.2000. (H.K. Rathod,J.)

Vyas